IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.1012 of 2001.
Date of decision:02.03.2007.

Rakesh Kumar ……**Petitioner**

Versus

Union of India & Another ……**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioner: **Mr.P.P. Chauhan, Advocate.**

For the Respondents: **Mr.Ravinder Thakur, Central Government Counsel.**

Dev Darshan Sud,J.

The petitioner has filed the present writ petition challenging the order passed by the respondents dis-allowing his claim to disability.

The case of the petitioner is that he joined the Indian Army on Ist January, 1996. He was medically examined and found perfectly fit for the service. During his service, the petitioner started suffering from un-specified psychosis. He was examined by Psychiatric and invalided out of service on 29th March, 1999. After the discharge he applied to respondent No.2 for the grant of disability pension. His case was examined at various levels and rejected. The order of rejection Annexure P-4 states that the disease is

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

neither attributable to nor aggravated by Military service; it is constitutional in nature and not related to service. Petitioner submits that the order which has been passed is unconstitutional, arbitrary and void. He cited a number of decisions of this Court in which disability pension has been granted in similar circumstances.

In reply to the writ petition, the respondents have submitted that he was suffering from un-specified psychosis (ICD-298) and non-dependent abuse of drug-cannabis-305.2. He was sent to the hospital on 8th June, 1999 because he developed erratic behaviour in the Unit. He was referred to 92 Base Hospital where he was examined by a Psychiatric and ultimately boarded out from military service. A perusal of the medical record shows that the petitioner was not suffering form the disease at the time he joined army. In-fact, Annexure R-2, which is the medical record, shows that there is no past history of mental illness or any hospitalization etc. for which he had suffered. It records that the petitioner was ill kempt, disheveled, lacking touch with reality. He was suffering from un-specified psychosis. He was found to be walking around lost in himself. He was argumentative. He was uncooperative with the staff and at times aggressive. He had hallucinatory experiences of hearing a dead man's voice, spoke irrelevantly at times and was firmly of the opinion that he was being persecuted by his fellow soldier and

officers. The opinion finally records,"Having had a major psychotic breakdown and developed substance abuse so early in service he is likely to remain in a liability to military service. Hence I recommend him to be invalided out of service in medical category "EEE".

From the record, it transpires and which fact has not been disputed that the petitioner had been serving in Jammu & Kashmir, in Baramulla and Nagaon area which are tensit infested. Undisputedly these are places where soldiers and officers of the Armed Forces and Para-military Forces are being subjected to extreme mental stress and body danger. They are engaged in counter insurgency and anti terrorists' activities and subjected to a very high incidence of battle fatigue. This Court can also take judicial notice of instances of soldiers and jawans of para-military forces attracting their own colleagues under considerable stress.

In ***Santosh Kumar vs. Union of India & Others, CWP No.742 of 2003, decided on 19.12.2006,*** a Division Bench of this Court has considered the case of a person suffering from schizophrenia. While holding that such disease falls under Category-"B" of the Annexures of the Appendix-II and it is termed as a disease affected by stress and strain, a direction was issued to the respondents to grant pension to the petitioner. It cannot be ruled out that the petitioner develops his mental neuroses while serving in a high tension area. The percentage of disability has not been mentioned in

the medical certificate, but the fact that he has been boarded out of the army service itself shows that the petitioner was not fit to serve in the army because of the nature of his disease.

Although the stand adopted by the respondent is that the long standing habit of cannabis abuse appears to be a more significant contributing factor to the psychotic illness, yet the medical certificate does not record so in so many words. The opinion of the doctor is:-

> "This young solider has no genetic loading for mental illness. Though he is serving in CIOPs area for the last nearly one year, which could have contributed as a stress factor, his long standing habit of cannabis abuse which started even before he joined service appears to have been a more significant contributing factor to his psychotic illness".

This opinion is not definite. The fact that the petitioner was serving in an operational area afflicted with terrorism can be a major contributory factor for his psychotic illness. The other opinion expressed is conjectural and more so when the use of drug has been described as non-dependence abuse. The position would have been different in case the drug abuse was a dependence which the petitioner had developed. In these circumstances, it is not possible

to accept the contention of the respondent that it was the use of cannabis which was the only contributing factor aggravating the disease. A liberal approach should have been adopted and the pension allowed to the petitioner.

The medical certificate records two reasons of disability; (i) Un-specified psychosis and (ii) Non-dependence abuse of drug cannabis. It is not as if the use of cannabis alone has contributed to the disability. Un-specified psychosis is also a major contributory factor of disability. It is also not the case of the respondents that non-dependence abuse of drug is the causative factor for un-specified psychosis. As noticed by me, the petitioner has been posted in an area which is afflicted by terrorism and where the military and para-military forces are engaged in counter insurgency and working under extreme environmental, physical and mental stress, therefore, it cannot be said that only the use of cannabis has caused un-specified psychosis.

In these circumstances, I find that the rejection of the claim of the petitioner is not in accordance with law. The reply filed by the respondents states that the appeals filed by the petitioner to the Authorities have been rejected. No material has been placed on the record to show that on what ground the appeal has been rejected. The respondents submitted that the petitioner smoked ganja while in school and continued this use of the drug clandestinely while after

joining the army. I do not find it is a sufficient ground to hold that the petitioner is suffering from the disease even before he joined the army.

In view of this fact, the order of rejection Annexures P-4 and P-5 are quashed and set aside. The respondents are directed to grant disability pension to the petitioner from the date he was boarded out of the army alongwith interest at the rate of 7% per annum.

March 2, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**